Lockheed Engineering and Management Services Company, Inc. *and* International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States & Canada, Local 780, Motion Picture Laboratory Technicians & Film Editors, AFL–CIO. Case 5–CA–14531

6 July 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 25 May 1983 Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Lockheed Engineering and Management Services Company, Inc., Greenbelt, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Contrary to the judge, Members Hunter and Dennis would consider employee turnover a factor in determining the existence of objective considerations sufficient to justify withdrawal of recognition. Under all the circumstances of the instant case, however, they do not find the turnover rate dispositive.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. This case was heard at Washington, D.C., on March 22 and 23, 1983. The charge was filed on July 22, 1982,[1] by International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States & Canada, Local 780, Motion Picture Laboratory Technicians & Film Editors, AFL–CIO (the Union). The complaint, which issued on September 30 and was amended at the hearing, alleges that Lockheed Engineering and Management Services Company (the Company), violated Section 8(a)(5) and (1) of the National Labor Relations Act. The graveman of the complaint is that since March 1, 1982, the Company has allegedly unlawfully failed and refused to recognize the Union as the exclusive collective-bargaining representative of the Company's employees in an appropriate unit. The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. The General Counsel and the Company each filed briefs.

On the entire record in this case[2] and from my observation of the demeanor of the witnesses, and having considered the briefs submitted by the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT AND THE ALLEGED PREDECESSOR EMPLOYER

Since sometime in 1973 and continuing until March 1, 1982, Computer Sciences Corporation, a Nevada corporation, Technicolor Graphics Services, Inc., a Delaware corporation, and Data Processing Associates, Inc., an Alabama corporation, d/b/a Computer-Science-Technicolor Associates, a joint venture (herein CSTA), with an office and place of business in Greenbelt, Maryland, was engaged in the business of providing data processing services to the National Aeronautics and Space Administration (herein NASA), an agency of the United States Government, at the Goddard Space Flight Center, Greenbelt, Maryland, pursuant to a contract awarded to CSTA by NASA. The services provided under that contract included, among numerous other things, photo processing and quality assurance work which was performed by CSTA employees working in the photo processing laboratory located within NASA's Goddard facility. On December 7, 1981, the Company, a Texas corporation, was awarded the contract to provide data processing services to NASA at Goddard commencing on March 1, 1982. The services to be provided to NASA by the Company under that contract, included, among numerous other things, photo processing and quality assurance work which was essentially the same as that which CSTA had provided prior to March 1. About December 15, the Company opened an office in Greenbelt, and began preparations for performance of its obligations under the contract. NASA is an entity directly engaged in interstate commerce, and since March 1, 1982, the Company has annually performed services valued in excess of $50,000 for NASA at the Goddard facility. CSTA was at all times material an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. See *Computer Sciences-Technicolor Associates*, 236 NLRB 266 (1978), enfd. per curiam No. 78–1545 (4th Cir. 1979). I further find, as the Company admits,

[1] All dates herein are for the period of December 1, 1981, through November 30, 1982, unless otherwise indicated.

[2] Errors in the transcript have been noted and corrected.

that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background: The Collective-Bargaining Relationship Between the Union and CSTA*

On September 25, 1974, a Board election was conducted among CSTA's photo processing laboratory employees (Case 5-RC-9047) to determine whether they desired representation by the Union. A majority of the approximately 65 eligible voters cast ballots for the Union. Specifically, 41 voted for the Union and 13 against the Union. Five ballots (cast by maintenance employees assigned to the laboratory area) were challenged by the Union.[3] On October 4, 1974, the Union was certified as exclusive representative of an appropriate unit consisting of all laboratory employees engaged in photo processing and quality assurance employed by CSTA at NASA's Goddard facility, excluding all other employees, all office clerical employees, guards and supervisors as defined in the Act.

Thereafter, representatives of CSTA and the Union exchanged correspondence and met on various occasions during 1975 and 1976 for the purpose of negotiating a collective-bargaining agreement. No such agreement was reached, however, and about July 23, 1976, CSTA withdrew recognition from the Union, asserting a doubt that the Union continued to represent a majority of the employees in the bargaining unit. The withdrawal of recognition and related events subsequently became the subject of an unfair labor practice complaint proceeding (Case 5-CA-8233). The decision of the Board in that proceeding, adopting the findings, conclusions, and recommended Order of Administrative Law Judge Nancy M. Sherman, issued on May 22, 1978, and is reported at 236 NLRB 266. In it, the Board concluded that the unit described above was appropriate for collective bargaining and that CSTA's withdrawal of recognition from the Union in July 1976, considered in the context of various independent acts of interference, restraint, and coercion which CSTA was found to have committed, had not been shown to have been predicated on a reasonably based, good-faith doubt of the Union's continued majority status and, therefore, violated Section 8(a)(5) and (1) of the Act. As a remedy, the Board ordered CSTA, inter alia, to bargain with the Union on request and embody any understanding reached in a signed agreement. The Board's order was enforced by the United States Court of Appeals for the Fourth Circuit on April 25, 1979, in an unreported, per curiam order.

Following the issuance of the court of appeals' order, representatives of CSTA and the Union again exchanged correspondence and met on various occasions in 1979, 1980, and early 1981 for the purpose of collective bargaining. The Union was represented in those meetings by its attorney and members of its professional staff. Pursuant to the union policy, no CSTA employees attended on the Union's behalf any of the negotiation sessions following the court of appeals' order. Union Attorney Bernard Mamet and CSTA Attorney Nicholas Counter were the chief negotiators for the respective parties. Union Business Manager Andrew Younger (then assistant business agent) was also present for the Union at all sessions. No agreement on a contract was ever reached between CSTA and the Union. The last face-to-face negotiating meeting between CSTA and union representatives took place on January 15, 1981, and the last written correspondence between the parties' representatives regarding collective bargaining, consisting of a four-page letter from Attorney Counter to Attorney Mamet, was dated February 6, 1981. In that letter, Counter presented CSTA's response to a union wage proposal, initially presented in February 1980, providing for cost-of-living increases, but with credit to the employer for merit increases granted to the employees. The proposal called for CSTA to make detailed calculations to determine the effect of the proposal on the individual unit employees. Counter set forth the calculations in his February 6, 1981 letter. However, on behalf of CSTA he proposed instead a 2-year contract with annual across-the-board increases of 8.5 percent and 7.5 percent respectively. Counter stated that as "wages is the only major issue separating the parties, the foregoing proposal should conclude an agreement." Counter further stated that in the absence of union acceptance of CSTA's proposal (which also encompassed CSTA's position on all other outstanding issues as set forth in a letter dated February 15, 1980) "the present impasse between the parties will continue."

Attorney Mamet testified that, within a week of receiving the letter, he telephoned Counter to discuss three matters; specifically, negotiations with respect to a different unit, information that the Goddard service contract with NASA would be opened for recompetition, and Counter's letter. With regard to the second matter, Counter said that he did not know about recompetition. With regard to the CSTA's wage proposal, Mamet expressed concern that because the Union had a contract with Technicolor Graphics Services, Inc., covering a unit at Cape Kennedy which contained a most-favored-nation clause, Technicolor might seek to reopen their contract if the Union accepted CSTA's proposal for the Goddard unit.

In March 1981, Mamet learned that in fact the service contract would be recompeted. In late March 1981 Mamet again telephoned Counter. They discussed the impending recompetition. Mamet asserted that they were still apart on wages, and that he would recommend to the Union that they await the outcome of the recompetition and then proceed to negotiate with the successful party, whether it be CSTA or some other firm. Counter did not object to this procedure. Mamet made his recom-

[3] In subsequent negotiations, the Union agreed with CSTA that the maintenance employees should be included in the bargaining unit. However, in the present proceeding, the General Counsel has requested that any bargaining order should track the language of the certified unit, without resolving the status of the maintenance employees.

mendation to the Union's then business manager and to Assistant Business Agent Younger, who concurred in the recommendation. Younger then consulted with the Union's contract committee, consisting of five employees, and they in turn polled the unit employees. The employees, by a nearly unanimous decision, agreed to reject CSTA's proposal and await the result of recompetition.[4]

On April 15, 1981, NASA officially announced that the data processing service contract then held by CSTA was open for recompetition, and interested parties were provided by NASA with copies of a "Request for Proposal" (RFP) dated April 15, 1981, detailing the services to be provided and the requirements of the contract. Among those firms that submitted proposals to NASA pursuant to the RFP were both CSTA and the Company. The RFP did not indicate whether the unit employees were represented by a labor organization.[5] On December 7, 1981, NASA announced the award to the Company.

B. *The Company's Takeover of the Service Contract, the Union's Demands for Recognition and Bargaining, and the Company's Failure to Respond to Those Demands*

As indicated, about December 15 the Company opened an office in Greenbelt and began preparations for performance of its obligations under the contract. As a part of those preparations, the Company, between January 14 and February 4, 1982, offered employment commencing on March 1 to each of the 25 hourly paid laboratory employees engaged in photo processing and quality assurance, then employed by CSTA in NASA's Goddard facility, in the bargaining unit. All of those 25 individuals subsequently accepted employment with the Company and continued working in NASA's Goddard photo processing labortory after March 1, performing essentially the same tasks using the same equipment as they had during their employment with CSTA. In addition, between January 16 and February 1 the Company offered employment commencing March 1 to each of the five hourly paid maintenance employees then employed by CSTA and assigned to the photo processing laboratory area, and all but one of those five maintenance employees subsequently accepted employment with the Company and continued working after March 1 in essentially the same capacities as they had during their employment with CSTA. The Company also offered employment commencing on March 1 to several supervisors then employed by CSTA in the photo processing and quality assurance areas. Each of them accepted employment with the Company and continued working after March 1 in essentially the same capacity as he had during his employment with CSTA. The Company also employed approximately 700 nonunit hourly paid employees to work under the NASA Goddard data processing service contract on and after March 1. CSTA, prior to March 1, had employed approximately the same number of workers under its most recent service contract with NASA. No unit of CSTA's employees at Goddard other than its laboratory employees engaged in photo processing and quality assurance was, or had ever been, represented by any union.

By letter dated December 18, 1981, Union Attorney Mamet told Company President R. B. Young that the Union represented the photographic employees at Goddard, that the Union had "for some time" been attempting to seek a contract with CSTA, but without success, and that there was an outstanding bargaining order of the Fourth Circuit Court of Appeals. Mamet requested that the Company offer employment to all of the unit employees, and that it bargain with the Union. Neither Young nor any other company official or representative responded to the letter. Company Vice President Edward Brown, who is in overall charge of servicing contracts with Government agencies, testified that a copy of Mamet's letter was forwarded to him from corporate headquarters about January 1. Brown testified that he discussed the letter with Alex Rosenberg who was at that time NASA contracting officer's technical representative (COTR) and, in that capacity, NASA's principal liaison with CSTA and subsequently with the Company. According to Brown, Rosenberg expressed surprise at the letter, stating that he was not aware of any "pressures" relative to the Union and CSTA, and that to his knowledge there had been no negotiations for about a year. However, Brown admitted that Rosenberg was not involved in the negotiations between the Union and CSTA. Brown further admitted that even before receiving the letter he had known of the Union's involvement at Goddard, although his information may not have been complete or wholly accurate. As Brown put it: "I had known that there had been a vote or an attempt to unionize some years before because we have some employees who were previously employees of CSTA which is one of the reasons we actually bid the job. We had some insight." Brown testified that he also spoke to company officials, including Director of Quality Assurance Thomas Mackin, who had formerly been with CSTA. According to Brown, he learned in sum that there were "periodic attempts to bargain," but "no activity for a long period of time," that at the time of the 1974 election there were about 60 employees in the unit, and that less than 10 of these remained at the present time.[6] Brown admitted that he never communicated or attempted to communicate with any unit employee or with any person who was involved in the negotiations between the Union and CSTA, that his information about the negotiations

[4] The foregoing findings with respect to the negotiations between the Union and CSTA are based on stipulated evidence, plus the uncontroverted testimony of Attorney Mamet and Business Manager Younger, who were the General Counsel's only witnesses. The Company presented five witnesses, all company supervisors, officials, or counsel. Neither side presented testimony by any unit employee, or by any representative of CSTA, with respect to the negotiations between CSTA and the Union.

[5] The evidence is inconclusive as to whether, in the absence of a collective-bargaining contract, such information would normally be provided in the RFP. Neither the actual nor any sample RFP or related form was presented in evidence. Company counsel William Sullivan testified in somewhat vague fashion about RFP procedure, but indicated that he did not actually know the answer.

[6] Stipulated evidence indicates that the Company hired seven photo processing and quality assurance employees and two maintenance employees assigned to the laboratory area, whose site seniority dates predate the 1974 election.

was hearsay, and that he was never informed that any employee did not want to be represented by the Union, or even that there was employee dissatisfaction. Rather, Brown asserted that his "inputs," all from management, were to the effect that there was "no reason to be represented by the Union." Therefore, according to Brown, he concluded that the Union's request for bargaining had "no real credence" and, on behalf of the Company, in January he personally made the decision not to bargain with the Union, subject only to reversal, if any, from higher management. Brown informed corporate headquarters and corporate counsel, but not the Union, of his decision.

William Sullivan, corporate counsel for the Company's parent corporation, testified that corporate headquarters requested him to research the question of whether the Company was obligated to bargain with the Union, and, specifically, whether the Union was the majority representative, and whether the Union had abandoned the unit. Sullivan obtained his factual, or alleged factual, information exclusively from company officials, including Brown and Company Human Resources Director James Haywood. Like Brown, Sullivan made no effort to communicate with any unit employee or with anyone who was involved in the contract negotiations, until after the present charge was filed in July 1982. Sullivan testified, in sum, that on the basis of his information and legal research, he concluded that there was no obligation to bargain because (1) there was disinterest in the Union on the part of its members, (2) there were only 7 or 8 employees in the unit who were there at the time of the election, (3) the bargaining failed to result in a contract, and (4) there was possible abandonment because there had been no bargaining between CSTA and the Union for at least a year.[7] Sullivan testified that he reached his conclusion about February 1, but decided not to inform the Union of the Company's decision because this might jeopardize the Company's efforts to obtain a service contract in Florida at a facility where the Union represented a unit of employees.

In the meantime, on January 20, Business Manager Younger telephoned Human Resources Director Haywood, who was in immediate charge of the Company's labor relations, and reiterated the Union's request for bargaining. Haywood said that he was not familiar with the situation, and that the Company was in a transition period and would probably take over about April 1. According to Younger, Haywood said he would get back to Younger. Having heard nothing, Younger again called Haywood, on March 29. Younger pointed out that time was running out under Section 10(b) of the Act, and that in the absence of any company response, the Union would assume that the Company did not intend to bargain and would act accordingly. According to Younger, Haywood again promised to get back to him. He did not. Haywood, in his testimony, admitted having these conversations with Younger, but testified that on each occasion he said that he would get back to Younger if and when he had some response. Haywood testified that he referred the matter to the Company's west coast counsel, i.e., Sullivan, and that Haywood was not involved in or informed of the Company's decision. However, Sullivan testified that he was never told about Younger's calls. I also find it incredible, in light of Haywood's position and area of responsibility, that he was at least informed of the Company's decision. I find Haywood to be a less than wholly credible witness, and I credit in full Younger's testimony concerning his conversations with Haywood.

Michael Taylor, who was presented as a company witness, was a production supervisor for CSTA. He was hired by the Company and continued to function as a production supervisor after March 1. Taylor testified concerning conversations which he allegedly had with two unit employees under his supervision; Singh Chharba and Michael Cassidy. Taylor's testimony was contradicted only by himself, particularly as to the dates and circumstances of these conversations. Taylor testified that at an early period, apparently prior to the CSTA unfair labor practice case, Cassidy spearheaded the union movement and Chharba was an ardent union supporter. Chharba in particular was a target of CSTA's unfair labor practices. Specifically, the Board found that supervisors told him, in sum, that there would never be a contract, and that he was being "screwed" by the Union and CSTA and would be better off looking for another job, and attempted to coerce him into informing CSTA about a union meeting. Taylor testified that he knew Chharba as a person whose "opinion was easily changed," and whose statements tended to change from day to day. Taylor initially testified that he spoke to Chharba and Cassidy within 1 to 2 weeks of the time that the Company was awarded the contract. However, Taylor subsequently admitted that he spoke to them within 3 weeks of the actual takeover, i.e., in March. Taylor first spoke to Chharba. According to Taylor:

> A. Mr. Chharba said that, I do not know what is going on with this union; they have not done anything in X amount of time; now what do they want from us. And without making it flowery or anything like that, he says that, I believe he said Mr. Younger had called, Michael [sic] Younger called Mr. Chharba and Mr. Chharba gave me his own reply, which was, I may—
>
> Q. Yes.
>
> A. Mr. Chharba's reply was, look, I am older; I have got high blood pressure and I have got three businesses; I don't have time to mess with this.
>
> Q. This [sic] Mr. Chharba's reply to Mr. Younger as he reported it to you?
>
> A. I believe that came from Mr. Chharba.

Taylor testified that 2 or 3 days later he spoke to Cassidy. Taylor initially testified that the conversation came about informally, but he subsequently admitted that he initiated the conversation because he learned from Chharba that the Union contacted Cassidy. Taylor testified that both conversations took place in his office. According to Taylor, Cassidy said that he would never again try to lead the employees in the Union. Taylor

[7] Sullivan admitted that the reduced size of the unit was not a relevant consideration.

then asked, "Do you feel that you have been shafted?" whereupon Cassidy answered, "You said that and I did not." Taylor further testified that Chharba told him that there was a "fat chance" that the Union would get in "if there was a rebid," and that he did not think the Union would ever get in again. However, on cross-examination Taylor admitted that Chharba made the "fat chance" remark a few days before the present hearing. Taylor further testified that, on several occasions after March 1, Chharba asked him what were the chances of the Union getting in and "what advantage do they have to us." According to Taylor, he would answer that he did not know.

Taylor testified that he reported his conversation with Chharba and Cassidy to his immediate superior, then Photographic Production Department Manager Richard "Red" Davis, who, like Taylor, had held a comparable position with CSTA. Taylor testified that he did so because, under CSTA, Davis had instructed him to report any union activities on the job. Neither Taylor nor Davis, who was also presented as a company witness, indicated that the Company ever asked them to speak to the employees for the purpose of determining whether the Union was still their bargaining representative. Davis testified that Taylor spoke to him in late March, and that he, in turn, spoke on one occasion with Gary Buckman, the Company's principal engineer, with respect to the unit. According to Davis, he reported his conclusion to Buckman, in a generalized fashion and without mentioning names, based on his own observations, coupled with what Taylor told him about Taylor's conversations with employees Cassidy and Chharba. Davis testified that, on the basis of his observations of the unit employees, it appeared that "everything was real quiet," that there was "really no feedback concerning how negotiations were going," and there was "very little interest on the part of employees." Davis further testified that Supervisor Taylor told him that Cassidy said he did not want to get involved in leading the Union, and that Chharba said he "felt that the people did not want the Union any longer." However, Taylor never testified that Chharba ever made such a statement. Other than this erroneous premise, Davis never claimed that he learned either directly or indirectly that any employee indicated that he or she did not wish to be represented by the Union. Davis, like Taylor, also testified to the effect that Chharba "swayed with the conversation . . . depending on who he was talking to." Davis did not speak to Cassidy and Chharba about their alleged conversations with Taylor until about 2 weeks before the present hearing, when he asked them to cooperate with company counsel in preparing for trial.

Engineer Buckman was not presented as a witness in this proceeding. Vice President Brown testified that he spoke to Buckman. Brown's testimony is the only evidence which might indicate, even inferentially, that Taylor's alleged conversations with Chharba and Cassidy ever came to the attention of those persons who were responsible for the Company's decision not to bargain with the Union. However, as previously discussed, the Company had by about February 1 made a final decision that it would not bargain with the Union. Therefore it is evident that the information allegedly conveyed by Taylor to Davis, and from Davis to Buckman, and from Buckman to Brown, could not have been a factor in the Company's decision.[8] It is further evident from the evidence that the Company's decision was made by higher management, in consultation with corporate counsel, none of whom had any personal contact with the unit employees, or personal knowledge of the CSTA negotiations, and none of whom made any effort, prior to making their decision, to consult with anyone having such personal contact or knowledge.

With regard to the matter of employee union activity, Union Business Manager Younger and Attorney Mamet testified in sum, and without contradiction, that the Union's employee committee continued to function throughout 1981, that Younger and the committee kept each other informed and consulted on courses of action, including their response to NASA's award of the service contract to the Company, and that the Union actively sought wage increases for the employees. In response to company counsel's question, Mamet testified that, in his opinion, the Union continued to enjoy majority support among the unit employees.

After the Union filed the present charge, Attorney Mamet sent another letter to Company President Young, again requesting bargaining. The Company also failed to respond to this request.

C. *Analysis and Concluding Findings*

The Company does not dispute (Tr. 18), and I find, that on the basis of the stipulated and other undisputed evidence in this proceeding, the Company is in fact and law the successor employer to CSTA, at least with respect to the unit of employees involved in this case. See *NLRB v. Burns Security Services*, 406 U.S. 272, 280–281 (1972). The Company also does not dispute (Tr. 18), and I find, that all laboratory employees engaged in photo processing and quality assurance employed by the Company at NASA's Goddard facility excluding all other employees, all office clerical employees, guards and supervisors as defined in the Act (i.e., the same unit of employees as certified by the Board but with a successor employer), constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act. Therefore, for collective-bargaining purposes, the Company stands in the shoes of the predecessor employer, and owes the same bargaining obligation to the Union as that previously owed by CSTA. *NLRB v. Burns*, supra 406 U.S. at 280–281.

In his opening argument, company counsel asserted "that the single, basic issue to be tried in this case is whether the circumstances that existed at the time Lockheed took over the operation of this unit were sufficient to give rise and in fact did give rise to a reasonable, good faith doubt on the part of Lockheed's management,

[8] Manager Davis testified that, in January, Business Management Younger told him that the union members were satisfied with the Company, that wages were up and benefits were good, and that Davis informed engineer Buckman of this conversation. However, Davis never claimed that Younger said or even inferred that the employees did not want union representation.

that a majority of the employees in the unit still wanted this union to represent them." The applicable principles of law in such cases are well settled although, as will be discussed, the Company contends otherwise. In the absence of special circumstances, an incumbent union's majority status is conclusively presumed to continue for a period of 1 year following the union's certification by the Board as a collective-bargaining agent or, absent certification, for 1 year following initial recognition. After the first year the presumption continues, but normally becomes rebuttable. As a general proposition of law, an employer, after the first year, may withdraw recognition from an incumbent union if the employer affirmatively establishes either (1) that at the time of withdrawal of recognition, the union in fact no longer enjoys a majority status; or (2) that the employer's refusal to bargain is based on a reasonably grounded doubt as to the union's majority status, asserted in good faith, based on objective considerations, and raised in a context free of employer unfair labor practices. *Terrell Machine Co.*, 173 NLRB 1480, 1480–1481 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970); see also *Bartenders Assn. of Pocatello*, 213 NLRB 651, 652 (1974).[9]

Applying the foregoing principles to the present case, it is evident that the Company unlawfully failed and refused to recognize and bargain with the Union, because the Company totally failed to affirmatively establish either that the Union actually lost its majority status, or that its alleged good-faith doubt was based on *objective consideration,* as distinguished from the alleged subjective reactions of management. As previously discussed, Vice President Brown and Corporate Counsel Sullivan suggested several bases on which either or both of them concluded that the Company was not obligated to bargain with the Union. However, these alleged bases were either erroneous in fact or immaterial as a matter of fact or law, or both. Brown and Sullivan attached significance to the fact that there were less than 10 employees who had been employed in the unit at the time of the 1974 election. However, it is settled law that new employees are presumed to support the Union in the same ratio as those whom they have replaced. See the Board's decision in the prior (CSTA) unfair labor practice case, 236 NLRB at 279–280. Therefore, employee turnover cannot be used as a basis for questioning a union's continued representative status, absent affirmative evidence that the new employees do not want union representation. Moreover, as the General Counsel points out (Br. 3), 10 of the 25 laboratory employees and 3 of 4 maintenance employees hired by the Company were in the unit as of November 1976, when a majority of employees, by signed petition, demonstrated their support for the Union.

Attorney Sullivan also attached significance to the absence of any collective-bargaining contract between the Union and CSTA, and to his belief that there had been no bargaining between them for over a year. However, the Act does not impose any time limit on good-faith bargaining. After the court of appeals granted enforcement of the Board's bargaining order, CSTA and the Union resumed their contract negotiations. The General Counsel does not contend that CSTA failed or refused to bargain in good faith. In the absence of contrary evidence, it must be assumed that CSTA did in fact bargain in good faith. Therefore, this is not a case involving a question of whether the successor employer has an obligation to remedy the predecessor's unfair labor practices. Compare *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973); *Perma Vinyl Corp.*, 164 NLRB 968 (1967), enfd. sub nom. *U.S. Pipe & Foundry Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968). However, the evidence in the present case, and specifically the uncontradicted testimony of Attorney Mamet and Business Manager Younger, does indicate that CSTA and the Union did not abandon bargaining or even reach an impasse. Rather, the parties continued negotiating until March 1981, when they arrived at an understanding that, in view of the impending recompetition, they would defer further negotiations in order to await the outcome of the recompetition. The unit employees concurred in this course of action. The Company knew that there had been negotiations between CSTA and the Union, and could easily have learned these facts by checking with either CSTA or the Union, or both. Instead, the Company planted its head firmly in the sand and assumed, on the basis of unconfirmed hearsay, that there had been an abandonment of bargaining. The uncontradicted testimony of Mamet and Younger further indicates that throughout 1981 the Union maintained contact with the unit employees and continued to act on their behalf with respect to their wages and other conditions of employment, and the employee committee continued to function and to consult with Younger. Therefore the Company had no objective basis for believing either that the Union had abandoned its representative status, or that the unit employees had abandoned the Union.

The remaining criterion allegedly relied on by Brown and Sullivan was that there appeared to be either a lack of union activity or lack of interest in the Union on the part of the employees. However, no company witness testified to the effect that any employee said that he or she did not wish to be represented by the Union. The little information which filtered up through corporate channels was relayed, if at all, long after the Company had already reached its decision that it would not bargain with the Union. Although Younger indicated to Manager Davis that the employees were pleased with the change of employers, he did not say or infer that they did not want union representation. If anything, Younger's statements indicated to Davis that the Union

[9] In its brief, the Company argues that, in the present case, the General Counsel must affirmatively prove that the Union still represented a majority of the unit employees at the time it requested the Company to bargain. That argument runs contrary to the general principles set forth above. Indeed, in *Burns* the Supreme Court expressly approved longstanding Board policy that after a reasonable time, normally 1 year, there remains a rebuttable *presumption* of majority representation. Normally, the General Counsel has the ultimate burden of proving an unfair labor practice. However, in the present case company counsel has defined the only issue in dispute as one in which (under settled law) the Respondent Employer must affirmatively show that it was not obligated to bargain with the Union. All other possible issues were resolved by admission, stipulation, or undisputed evidence. Absent such affirmative showing, there is nothing for the General Counsel to prove.

was in contact with the employees and was aware of their views. Davis also testified in sum that there did not appear to be much talk about the Union among the employees. However, Davis' observations were communicated to higher management, if at all, long after the Company decided not to bargain with the Union. Therefore it is evident that his observations did not play a part in the Company's decision. Moreover, that absence of such talk had no significance. The employees were aware, and indeed agreed, that contract negotiations were suspended until the outcome of recompetition. Therefore there was not much to talk about. The employees could also reasonably believe, based on their prior experience with CSTA, that it might be inadvisable to openly discuss union matters in the presence of their supervisors, some of whom, like Davis and Taylor, had been supervisors for CSTA in 1976, when CSTA engaged in unlawful conduct directed against the unit employees. Similarly, Supervisor Taylor's conversations with employees Cassidy and Chharba cannot be used as a basis for justifying the Company's decision and, indeed, the Company in its brief does not argue otherwise. These conversations took place long after the Company made its decision, and against a background which would hardly be conducive to candid talk between employees and supervisors. Additionally, neither employee said anything which would constitute rejection of union representation. All Cassidy said, in essence, was that he did not wish to play a leadership role in the Union, and his response to Taylor's question about being shafted was equivocal.[10] Chharba, true to form, was also equivocal, and his comments were in the nature of questions rather than clear expressions of opinion.

Vice President Brown testified, with evident candor, that he personally made the decision not to bargain with the Union because, in his opinion, there was "no reason to be represented by the Union." That in essence was the Company's position in January 1982. The Company had no objective basis for refusing to recognize and bargain with the Union. Nevertheless the company took the attitude that it would not recognize the Union because, in its view, the employees did not need union representation. All that followed was essentially rationalization for a decision already made. That may be a legitimate reason for rejecting an initial request for recognition, but it is not a valid basis for refusing to bargain with an incumbent union. Nevertheless, the Company argues (Br. 23) that "it should be recognized here that, at least when a union's certification is over seven and one-half years old, *and* no collective bargaining agreement has ever been in effect, *and* no unremedied unfair labor practices are present, *and* a new employer has replaced the employer that was on hand at the time of the certification, the purposes of the Act are not furthered by continuing to presume the majority status of the union without actual evidence of the employees' wishes. Since there is no such evidence in this case, the complaint should be dismissed." The principal difficulty with this argument, carefully tailored to encompass some, but not all, of the salient facts in this case, is that the argument runs counter to settled law, including decisions of the Supreme Court and the rationale underlying those decisions. As previously discussed, the Supreme Court held in *Burns* that a successor employer inherits the bargaining obligation of the predecessor, except to the extent that the successor is not bound by prior collective-bargaining contracts. Also as discussed, there is no time limit on good-faith bargaining. The Company's proposed standard would broaden the circumstances under which an employer could unilaterally withdraw or withhold recognition from an incumbent union, contrary to the statutory purpose of promoting industrial stability and peace. See *Ray Brooks v. NLRB*, 348 U.S. 96, 103-104 (1954).[11]

Therefore, I find, as alleged in the complaint, that the Company violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive representative of the photo processing and quality assurance employees at Goddard. The Company's obligation commenced as of March 1, 1982, when it began operating under the NASA contract and became the employer of the unit employees. The Company violated the Act by failing and refusing to respond to the Union's continuing request for bargaining, reiterated on several occasions. Although the Company never responded to the Union's requests, company witnesses Brown and Sullivan admitted, in sum, that the Company's silence, at least from about February 1, constitued an effectuation of the Company's unlawful decision that it would not recognize and bargain with the Union.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

[10] Moreover, Taylor's question constituted unlawful interrogation. Taylor had no legitimate reason to question Cassidy concerning his attitude on union-related matters. As previously discussed, the conversation occurred against a background of unlawful conduct by CSTA, and Taylor was a former CSTA supervisor who, by his own admission, was obtaining information in accordance with instructions given to him as a CSTA supervisor. Nevertheless, Taylor did not give Cassidy any assurance against reprisal, or explanation that he had a legitimate reason to question Cassidy.

[11] In its brief, the Company places heavy reliance on *George Braun Packing Co.*, 210 NLRB 1028 (1974). In *Braun*, the Board, by a 3 to 2 decision, affirmed the administrative law judge's conclusion that, in the circumstances of that case, the employer had a legitimate good-faith doubt as the incumbent union's representative status, and did not violate the Act by refusing to resume bargaining with the incumbent union after the employer filed an RM petition for a representative election. However, it is evident from the decision in that case that both the administrative law judge and the Board majority were strongly influenced by evidence that the union sought to secure the support of the unit employees through strike conduct characterized by "frequent and violent acts of coercion and vandalism." (210 NLRB at 1033.) Even so, the Board majority emphasized that it was affirming the judge's decision only because the employer filed "a proper RM petition" (id. at fn. 2). In so doing, the Board gave effect to its longstanding reluctance, in such or similar situations involving serious threats or acts of union violence, to issue bargaining orders without an election. See *Allou Distributors*, 201 NLRB 47 (1973), citing *Laura Modes Co.*, 144 NLRB 1592 (1963). In the present case, the employer did not file an RM petition, and there is no contention that the Union engaged in threats or acts of violence.

3. All laboratory employees engaged in photo processing and quality assurance employed by the Company at NASA's Goddard Space Flight Center located in Greenbelt, Maryland, excluding all other employees, all office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been, and is, the exclusive collective-bargaining representative of the Company's employees in the unit described above.

5. The Company has engaged in and is engaging, in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, by failing and refusing to recognize and bargain in good faith with the Union as the exclusive representative of the employees in the appropriate unit.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has violated Section 8(a)(1) and (5) of the Act, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Company be ordered to recognize and, on request, bargain with the Union as the bargaining representative of the employees in the appropriate unit and to post appropriate notices.

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Lockheed Engineering and Management Services Company, Inc., Greenbelt, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to recognize and bargain collectively in good faith with the Union as the exclusive representative of all its employees in the above-described appropriate unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively with the Union, as the exclusive representative of all employees in the appropriate unit described above, with regard to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Greenbelt, Maryland facility copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to recognize and bargain collectively in good faith with International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States & Canada, Local 780, Motion Picture Laboratory Technicians & Film Editors, AFL-CIO, as the exclusive representative of all employees in the following appropriate unit:

> All Laboratory employees engaged in photo processing and quality assurance employed by us at NASA's Goddard Space Flight Center located in Greenbelt, Maryland, excluding all other employees, all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to engage in union or concerted activities, or to refrain therefrom.

WE WILL recognize and, on request, bargain collectively with International Alliance of Theatrical Stage Employees, Local 780 as the exclusive representative of all employees in the appropriate unit described above, with regard to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

LOCKHEED ENGINEERING AND MANAGEMENT SERVICES COMPANY, INC.